

03-21-05

DAE

#11

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

**Attorney Docket No.:  
3660P029**

First Named Inventor: Daniel Abeshouse

Application No.: 09/710,097

Art Unit: 3624

Filed: November 10, 2000

Examiner: Weisberger, Richard C.

Title: METHOD, APPARATUS, AND SYSTEM FOR PROVIDING VARIABLE MARKET INFORMATION  
DISCLOSURE IN AN AUCTION

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**RECEIVED**

**MAR 23 2005**

**OFFICE OF PETITIONS**

NOTE: If information or assistance is needed in completing this form, please contact  
Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a  
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after  
the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually  
obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant  
applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

[ ] Small entity fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

[ X ] Other than small entity – fee \$ 1,500.00 (37 CFR 1.17(m)).

**2. Reply and/or fee**

- A. The reply and/or fee to the above-noted Office action in  
the form of **Response to Office Action mailed March 26, 2003 and Supplemental Information  
Disclosure Statement Pursuant to 37 C.F.R. § 1.56 ET SEQ (Exhibit A)** (identify type of reply);  
[ X ] has been filed previously on February 18, 2005, copies of which are enclosed herewith.  
[ ] is enclosed herewith.
- B. The issue fee of \$ \_\_\_\_\_  
[ ] has been paid previously on \_\_\_\_\_.  
[ ] is enclosed herewith.

03/22/2005 AWONDAF1 00000010 09710097

01 FC:1453

1500.00 0P

3. Terminal disclaimer with disclaimer fee

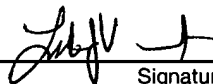
☒ [ X ] Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ [ ] A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. A Response to Office Action was filed June 26, 2003 (a copy of which is presented as Exhibit A). Applicants received a return postcard stamped by the mailroom of the United States Patent and Trademark Office with a date of June 30, 2003, (a copy of which is presented as Exhibit B) indicating that the Response filed on June 26, 2003 was received by the United States Patent and Trademark Office. Applicants then received a Notice of Abandonment dated January 18, 2005 (a copy of which is presented as Exhibit C). On same date as present petition, under separate cover, applicants also filed a Petition Under 37 C.F.R. § 1.181(a) to Withdraw Holding of Abandonment. Should the Petition under 37 C.F.R. § 1.181(a) be Granted, Applicant requests that the present fee of \$1,500.00 be refunded. (NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))).

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

March 17, 2005  
Date  
Telephone Number: (408) 720-8300

  
Signature  
Lester J. Vincent  
Typed or printed name  
31,460  
Reg. No.

Blakely, Sokoloff, Taylor & Zafman LLP  
12400 Wilshire Boulevard, Seventh Floor  
Los Angeles, California 90025  
Address

Enclosures: ☒ [ X ] Fee Payment  
☐ [ ] Reply  
☐ [ ] Terminal Disclaimer Form  
☐ [ ] Additional sheets containing statements establishing unintentional delay  
☒ [ X ] Other: Fee Transmittal Form

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

EXPRESS MAIL STATEMENT

"Express Mail" mailing label number: EV336587011US

Date of Deposit: March 17, 2005

I hereby state that I am causing this paper or fee to be deposited with the United States Postal Service "Express Mail Post Office to Addressee" service on the date indicated above and that this paper or fee has been addressed to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Vanessa Sanchez (Typed or printed name of person mailing paper or fee)  
Vanessa (dau) (Signature of person mailing paper or fee)  
3-17-05 (Date Signed)

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Daniel ABESHOUSE, et al.	)	
	)	
Application No.: 09/710,097	)	Group Art Unit: 3624
	)	
Filed: November 10, 2000	)	Examiner: Richard C. Weisberger
	)	
For: METHOD, APPARATUS AND SYSTEM	)	
FOR PROVIDING VARIABLE MARKET	)	
INFORMATION DISCLOSURE IN AN	)	
AUCTION	)	

MAIL STOP: Fee Amendment  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RECEIVED**  
**MAR 23 2005**  
**OFFICE OF PETITIONS**

Sir:

**AMENDMENT TRANSMITTAL FORM**

1. Transmitted herewith is a response to the Office Action dated March 26, 2003.
2. Additional papers enclosed:

- |                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/>            | Drawings: <input type="checkbox"/> Formal <input type="checkbox"/> Informal (Correction)   |
| <input checked="" type="checkbox"/> | Supplemental Information Disclosure Statement  |
| <input checked="" type="checkbox"/> | Form PTO-1449A, 8 references included  |
| <input type="checkbox"/>            | Citations  |
| <input type="checkbox"/>            | Declaration of Biological Deposit  |
| <input type="checkbox"/>            | Submission of "Sequence Listing", computer readable copy and/or amendment<br>pertaining thereto for biotechnology invention containing nucleotide and/or amino<br>acid sequence. |
| <input type="checkbox"/>            | Declaration  |

**CERTIFICATE OF MAILING (37 C.F.R. § 1.8)**

I hereby certify that this paper, and the papers and/or fees referred to herein as transmitted, submitted or enclosed, are being deposited on the date shown below with the U.S. Postal Service with sufficient postage as first-class mail in an envelope addressed to Mail Stop: Fee Amendment, Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Name Kim R. Jessum Signature *Kim R. Jessum* Date of Deposit June 26, 2003

3. Extension of Time

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136(a) apply.

☒ Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

☐ Applicant petitions for an extension of time, the fees for which are set out in 37 C.F.R. § 1.17(a), for the total number of months checked below:

<u>Total Months Requested</u>	<u>Fee for Extension</u>	<u>Fee for Small Entity</u>
<input type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 400.00	\$ 200.00
<input type="checkbox"/> three months	\$ 920.00	\$ 460.00
<input type="checkbox"/> four months	\$ 1,440.00	\$ 720.00

Extension of time fee due with this request: \$920.00.

If an additional extension of time is required, please consider this a Petition therefor.

☐ An extension for \_\_\_\_\_ months has already been secured and the fee paid therefor of \$\_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

4. Constructive Petition

☒ EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).

5. Fee Calculation (37 C.F.R. §1.16)

CLAIMS AS AMENDED						
	Claims Remaining After Amendment		Highest No. Previously Paid	Present Extra	at Rate of	Total Fees
Total Claims (37 C.F.R. §1.16(c))		minus		0	x \$18 each=	+ \$
Independent Claims (37 C.F.R. §1.16(b))		minus		0	x \$84 each=	+ \$
[ ] First presentation of Multiple dependent claim(s)					\$280.00	+ \$
SUB-TOTAL =						\$
Reduction by ½ for filing by a small entity						- \$
TOTAL FEE =						\$ 0

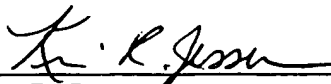
6. Fee Payment

- ☐ No fee is to be paid at this time.
- ☒ The Commissioner is hereby authorized to withdraw \$180.00 from Deposit Account 50-0310 for the §1.17(p) fee for the Supplemental IDS.
- ☐ Check in the amount of \$\_\_\_\_\_ for \_\_\_\_\_. The Commissioner is hereby authorized to charge any additional extension of time fee or additional fee for claims due to Deposit Account No. 50-0310.
- ☒ The Commissioner is hereby authorized to charge any additional fees which may be required, including fees due under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account 50-0310.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

Dated: June 26, 2003

By:   
Kim R. Jessum  
Reg. No. 43,694

MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
Telephone: (215) 963-5000  
Facsimile: (215) 963-5299

PLEASE STAMP AND RETURN TO SHOW RECEIPT OF:

In re Application of: Daniel ABESHOUSE et al.

Application No.: 09/710,097

Group Art Unit: 3624

Filed: November 10, 2000

Examiner: R.C. Weisberger

Title: METHOD, APPARATUS AND SYSTEM FOR PROVIDING VARIABLE  
MARKET INFORMATION DISCLOSURE IN AN AUCTION

1. Transmittal (3 pages - *in duplicate*)
2. Response to Office Action (4 pages).
3. Supplemental Information Disclosure Statement (3 pages, with 8 references).
4. Form PTO-1449A (1 page).

Dated: June 26, 2003

Attorney Docket No.: 046700-5015

KRJ

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Daniel ABESHOUSE, et al.	)	
	)	
Application No.: 09/710,097	)	Group Art Unit: 3624
	)	
Filed: November 10, 2000	)	Examiner: Richard C. Weisberger
	)	
For: METHOD, APPARATUS AND SYSTEM	)	
FOR PROVIDING VARIABLE MARKET	)	
INFORMATION DISCLOSURE IN AN	)	
AUCTION	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RECEIVED  
MAR 23 2005  
OFFICE OF PETITIONS

**RESPONSE TO OFFICE ACTION**

Dear Sir:

In response to the Office Action mailed March 26, 2003, Applicants respectfully request reconsideration of the subject application in view of the following remarks.

**REMARKS**

Claims 1-21 and 28-59 are currently pending in this application.

**Rejection under 35 U.S.C. §101**

Claims 1-19 and 28-59 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter, lacking any claimed ties to the technological arts.

Applicants respectfully disagree with the Examiner's rejection of the claims as directed to non-statutory subject matter. Each of claims 1-21 and 28-32 are directed to an auction and each of claims 33-59 are direct to an online auction. An auction does not lack "claimed ties to the technological arts," as the Examiner suggests. The law is clear that business methods, in and of themselves constitute statutory subject matter under 35 U.S.C. § 101. State St. Bank & Trust Co.



v. Signature Fin. Group, Inc., 149 F.3d 1368 (Fed. Cir. 1998). Therefore, the Examiner's rejection of claims 1-21 and 28-59 under 35 U.S.C. § 101 should be withdrawn.

**Rejection under 35 U.S.C. §112**

Claims 51-59 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner states that "a system" in the preamble can read as an apparatus or a method.

Applicants respectfully assert that claims 51-59 are apparatus claims. The claims set forth elements of structure that make up the combination claimed, rather than steps or acts that indicate a method. Based on these remarks, Applicants respectfully request that the rejection under 35 U.S.C. § 112 be withdrawn.

**Rejection under 35 U.S.C. §§102(b) and 103(a)**

Claims 20, 21 and 51-59 are rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over FreeMarkets' SEC S-1/A document. The Examiner includes an excerpt from the SEC S-1/A document that teaches an online auctioning system sold under the name, BidWare®.

Applicants assert that the present invention was neither anticipated nor obvious over FreeMarkets' BidWare® disclosed in the SEC S-1/A document, as well as the additional documents cited in the Supplemental Information Disclosure Statement and Form PTO-1449A submitted simultaneously herewith. As requested, a duplicate copy of the Information Disclosure Statement submitted with Applicants' Petition to Make Special is also enclosed herewith.

The Specification describes the bid data and market feedback as "feedback about market activity," which "includes any information or data related to bidders 30 or their bids or interrelationships between those bids, and any other bid related information or data such as, for example, the quality of goods being sold, that is received before or during the auction 56." Specification, p. 14, lines 21-25. As further described in the specification, [m]arket feedback

may include, for example, bids that have been placed by other bidders 30, the rank of a participants bid in relation to the other bidders 30, the identity of bidders 30 in relation to their bids or rank, or any subset of that information. Market feedback may also include non-pricing information such as, for example, the quality of the goods to be provided by bidders 30 and shipping costs associated with one or more bidders 30." Specification, p. 14, lines 25-30.

Furthermore, "[i]n a certain type of online auction 56, which may be referred to as full market feedback format, all bids 58 are visible to every bidder 30. Bids 58 are sorted from highest to lowest. Thus, each bidder 30 can assess its rank and competitive position if bidders 30 are individually identified, by comparing its current best bid 58 with other bids 58 placed in the online auction 56. In a second type of online auction 56, bidders 30 are provided with only their own current best bid 58 and the current market-leading bid. Bidders 30 are not aware of every bid 58 placed by other participants, but they can assess their competitive position against the current market-leading bid. In one variation of that second type of online auction 56, bidders 30 also receive feedback about their current rank." Specification, p. 15, lines 4-13.

At the time the patent application for the present invention was filed, electronic auctions using BidWare® were conducted as described in the Background of the Invention of the Specification, p. 5, line 1 – p. 7, line 23. Specifically, after participants are invited to participate in an auction, they access the auctions and place bids based on "bids of other bidders 30, their own costs, and potential efficiencies." Specification, p. 7, lines 11-12. Some of these participants that have access to the auction information submit bids late in the auction process or not at all. Specification, p. 7, line 20.

An example of an actual electronic auction using BidWare® is also described in the Jahnke article, "How Bazaar," which is also cited in the Supplemental Information Disclosure Statement submitted herewith. This example discloses an auction event, where participants submit bids at various times and compete to provide the lowest bid. Jahnke, p. 6.

Neither the Background of the Invention nor the Jahnke article disclose "providing the bid data to a competing bidder that meets a condition for receiving the bid data" or "providing market feedback to one or more selected client processors from which the bid server received a valid bid," as required in the claims. Rather, as described in the Jahnke article, p. 1 and the

Background of the Invention of the Specification, p. 7, lines 10-13, bids are viewed, or considered by all bidders, so they can submit a better (lower) bid and the bidders are not identified to each other.

Moreover, the BidWare® Manuals of 1999 and 2000 cited in the Supplemental Information Disclosure Statement and Form PTO-1449A disclose that “[b]idder anonymity is preserved” when viewing bid history and all participants who log into an event may view bid information. BidWare® Manual 2000, p. 6-1 – 6-4; BidWare® Manual 1999, p. 5-1 – 5-4. There is no disclosure of a condition to be met during the auction or a requirement that a bid be placed in order to view the bid data in these manuals.

### CONCLUSION

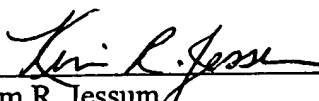
In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Except for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees, including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required in relation to this Response, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

Dated: June 26, 2003

By:   
Kim R. Jessum  
Registration No. 43,694

MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
Telephone: (215) 963-5000  
Facsimile: (215) 963-5299

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
 )  
Daniel ABESHOUSE, et al. )  
 )  
Application No.: 09/710,097 ) Group Art Unit: 3624  
 )  
Filed: November 10, 2000 ) Examiner: Richard C. Weisberger  
 )  
For: METHOD, APPARATUS AND SYSTEM )  
FOR PROVIDING VARIABLE MARKET )  
INFORMATION DISCLOSURE IN AN )  
AUCTION )

**SUPPLEMENTAL INFORMATION DISCLOSURE  
STATEMENT PURSUANT TO 37 C.F.R. §§ 1.56 ET SEQ.**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 C.F.R. § 1.97(b), the above-identified Applicants cite the following references, which may be material to the examination of this application and in respect of which there may be a duty to disclose in accordance with 37 C.F.R. § 1.56.

This Supplemental Information Disclosure Statement is being filed before the mailing date of a final action and a petition with the required fee set forth in § 1.17(p) is being submitted simultaneously herewith.

In compliance with 37 C.F.R. § 1.98(a), copies of the cited references set forth below and listed on the attached Form PTO-1449A (1 sheet) are provided.

Publications

Jahnke, "How Bazaar", CIO Web Business Magazine, August 27, 1998

"Online bidding software", Electronic Buyers' News, Issue 1072, p86, 1/6p, August 25, 1997

Woolley, "E-muscle", Forbes, March 9, 1998

Andrews, "Auctions Catch the Interest of Hobbyists and Big Business", August 24, 1998

Wilder, "What's Your Bid? – FreeMarkets' real-time online bidding technology lets clients drive downcosts and improve product value", InformationWeek, November 10, 1997

Associated Press, "Auction on Web is Buyer's Market", April 6, 1998

FreeMarkets, Inc., BidWare® for Bidders version 2.7.1, Installation and User Manual, 1999

FreeMarkets, Inc., BidWare® 3.0 Manual, 2000

Applicants respectfully request that these items be considered by the Examiner, and that the Examiner acknowledge consideration of these references by initialing and returning copies of the enclosed Form PTO-1449A with the next official action.


While this Supplemental Information Disclosure Statement may be "material" pursuant to 37 C.F.R. § 1.56, it is not intended to constitute an admission that any patent, publication or other information referred to herein is "prior art" for this invention or otherwise material to the patentability of this invention as defined in 37 C.F.R. § 1.56.

In accordance with 37 C.F.R. § 1.97(g), the filing of this Supplemental Information Disclosure Statement shall not be construed as a representation that a search has been made or that no other material information as defined in 37 C.F.R. § 1.56(b) exists.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees required for the filing of this Supplemental Information Disclosure Statement, including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

June 26, 2003  
Date

By:   
Kim R. Jessum  
Reg. No. 43,694  
Customer No. 028977  
MORGAN, LEWIS & BOCKIUS, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Telephone: (215) 963-4753  
Facsimile: (215) 963-5299

Substitute for form 1449A/PTO		<b>Complete if Known</b>	
<b>SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  (use as many sheets as necessary)		Application Number	09/710,097
		Filing Date	November 10, 2000
		First Named Inventor	Abeshouse, et al.
		Group Art Unit	3624
		Examiner Name	Richard C. Weisberger
Sheet 1 of 1	Attorney Docket Number		046700-5015

U.S. PATENT DOCUMENTS				
Exr Initials	U.S. Patent Document		Name of Inventor or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY
	Number	Kind Code (if known)		

FOREIGN PATENT DOCUMENTS						
Exr Initials	Foreign Patent Document			Name of Inventor or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY	T <sub>1</sub>
	Country Code	Number	Kind Code (if known)			

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS		
Exr Initials	Include Name of Author (in CAPITAL LETTERS), title of the article (where appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T <sub>1</sub>
	Jahnke, "How Bazaar", CIO Web Business Magazine, August 27, 1998	
	"Online bidding software", Electronic Buyers' News, Issue 1072, p86, 1/6p, August 25, 1997	
	Woolley, "E-muscle", Forbes, March 9, 1998	
	Andrews, "Auctions Catch the Interest of Hobbyists and Big Business", August 24, 1998	
	Wilder, "What's Your Bid? – FreeMarkets' real-time online bidding technology lets clients drive downcosts and improve product value", InformationWeek, November 10, 1997	
	Associated Press, "Auction on Web is Buyer's Market", April 6, 1998	
	FreeMarkets, Inc., BidWare® for Bidders version 2.7.1, Installation and User Manual, 1999	
	FreeMarkets, Inc., BidWare® 3.0 Manual, 2000	

EXHIBIT B



PLEASE STAMP AND RETURN TO SHOW RECEIPT OF:

In re Application of: Daniel ABESHOUSE et al.

Application No.: 09/710,097

Group Art Unit: 3624

Filed: November 10, 2000

Examiner: R.C. Weisberger

Title: METHOD, APPARATUS AND SYSTEM FOR PROVIDING VARIABLE  
MARKET INFORMATION DISCLOSURE IN AN AUCTION

1. Transmittal (3 pages - *in duplicate*)
2. Response to Office Action (4 pages).
3. Supplemental Information Disclosure Statement (3 pages, with 8 references).
4. Form PTO-1449A (1 page).

Dated: June 26, 2003

Attorney Docket No.: 046700-5015

KRJ

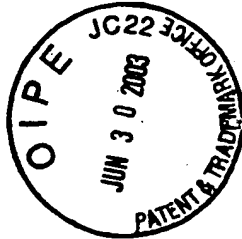


EXHIBIT C



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

DHG  
CLF  
Ariba, Inc. Transferred

03660P029

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,097	11/10/2000	Daniel Abeshouse	<del>046700-5015</del>	4234

28977 7590 01/18/2005

MORGAN, LEWIS & BOCKIUS LLP  
1701 MARKET STREET  
PHILADELPHIA, PA 19103-2921

EXAMINER

WEISBERGER, RICHARD C

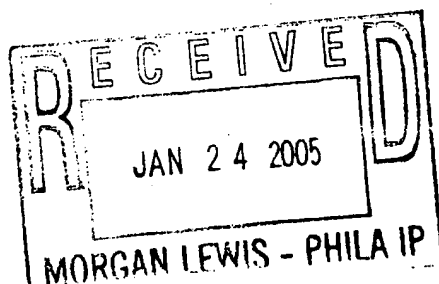
ART UNIT

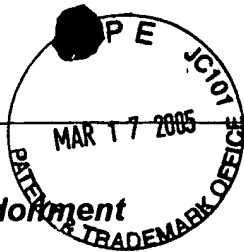
PAPER NUMBER

3624

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.





# Notice of Abandonment

Application No.

09/710,097

Examiner

Richard C Weisberger

Applicant(s)

ABESHOUSE ET AL.


Art Unit

3624

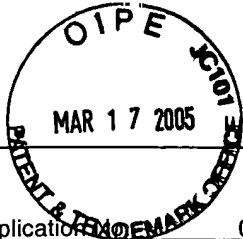
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on 26 March 2003.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

 Richard C Weisberger  
Primary Examiner  
Art Unit: 3624

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

**TRANSMITTAL****PATENT**

Application No. 09/710,097  
Filing Date: November 10, 2000  
First Named Inventor: Daniel Abeshouse  
Examiner's Name: Weisberger, Richard C.  
Art Unit: 3624  
Attorney Docket No.: 003660.P029

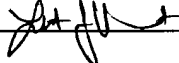
- ☐ An Amendment After Final Action (37 CFR 1.116) is attached and applicant(s) request expedited action.
- ☒ Charge any fee not covered by any check submitted to Deposit Account No. 02-2666.
- ☒ Applicant(s) hereby request and authorize the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 CFR 1.16 and 1.17, for any concurrent or future reply to Deposit Account No. 02-2666.
- ☐ Applicant(s) claim small entity status (37 CFR 1.27).

**ATTACHMENTS**

- ☐ Preliminary Amendment
- ☐ Amendment/Response with respect to Office Action
- ☐ Amendment/Response After Final Action (37 CFR 1.116) (reminder: consider filing a Notice of Appeal)
- ☐ Notice of Appeal
- ☐ RCE (Request for Continued Examination)
- ☐ Supplemental Declaration
- ☐ Terminal Disclaimer (reminder: if executed by an attorney, the attorney must be properly of record)
- ☐ Information Disclosure Statement (IDS)
- ☐ Copies of IDS citations
- ☐ Petition for Extension of Time
- ☒ Fee Transmittal Document (that includes a fee calculation based on the type and number of claims)
- ☐ Cross-Reference to Related Application(s)
- ☐ Certified Copy of Priority Document
- ☒ Other: **Petition Under 37 C.F.R. §1.181(a) to Withdraw Holding of Abandonment (3 pages, plus exhibits)**
- ☐ Other: \_\_\_\_\_
- ☐ Check(s) \_\_\_\_\_
- ☒ Postcard (Return Receipt)

**SUBMITTED BY:**

BLAKELY SOKOLOFF TAYLOR &amp; ZAFMAN LLP

TYPED OR PRINTED NAME: Lester J. VincentSIGNATURE: REG. NO.: 31,460DATE: March 17, 2005ADDRESS: 12400 Wilshire Boulevard, Seventh FloorLos Angeles, California 90025TELEPHONE NO.: (408) 720-8300**EXPRESS MAIL STATEMENT**

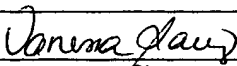
I hereby state that I am causing this paper or fee to be deposited with the United States Postal Service "Express Mail Post Office to Addressee" service on the date indicated above and that his paper or fee has been addressed to: Mail Stop Petition, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

on March 17, 2005

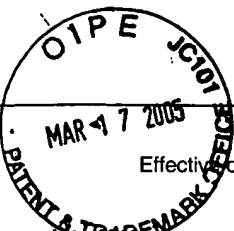
Date of Deposit

Vanessa Sanchez

Name of Person Mailing Correspondence

  
Signature3/17/05  
DateExpress Mail Label No. (if applicable): EV 336587011 US**Send to:** COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, Virginia 22313-1450

(1/2/14/03)

**FEE TRANSMITTAL FOR FY 2005**

Effective from 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**TOTAL AMOUNT OF PAYMENT (\$)** 0.00

Complete if known:

Application No. 09/710,097  
 Filing Date November 10, 2000  
 First Named Inventor Daniel Abeshouse  
 Examiner Name Weisberger, Richard C.  
 Art Unit 3624  
 Attorney Docket No. 3660P029

Applicant claims small entity status. See 37 CFR 1.27.

**METHOD OF PAYMENT** (check all that apply)
☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify)
**Deposit Account**Deposit Account Number : 02-2666

Deposit Account Name: \_\_\_\_\_

☒ The Director is Authorized to do the following with respect to the above-identified Deposit Account:

- ☒ Charge fee(s) indicated below.  
☒ Charge any additional fee(s) or underpayment of fee(s) during the pendency of this application.  
☐ Charge fee(s) indicated below except for the filing fee  
☒ Credit any overpayments.  
☒ Any concurrent or future reply that requires a petition for extension of time should be treated as incorporating an appropriate petition for extension of time and all required fees should be charged.

Warning: Information on this form may become public. Credit card information should not be included on this form.  
 Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

<u>Large Entity</u>		<u>Small Entity</u>		<u>Fee Description</u>		<u>Fees Paid (\$)</u>
<u>Fee Code</u>	<u>Fee (\$)</u>	<u>Fee Code</u>	<u>Fee (\$)</u>			
1011	300	2011	150	Utility application filing fee	} 1,000/500	_____
1111	500	2111	250	Utility search fee		_____
1311	200	2311	100	Utility examination fee		_____
1012	200	2012	100	Design application filing fee	} 430/215	_____
1112	100	2112	50	Design search fee		_____
1312	130	2312	65	Design examination fee		_____
1013	200	2013	100	Plant filing fee	} 660/330	_____
1113	300	2113	150	Plant search fee		_____
1313	160	2313	80	Plant examination fee		_____
1004	300	2004	150	Reissue filing fee	} 1,400/700	_____
1114	500	2114	250	Reissue search fee		_____
1314	600	2314	300	Reissue examination fee		_____
1005	200	2005	100	Provisional application filing fee		_____
<b>SUBTOTAL (1) \$</b> <u>0.00</u>						

**2. EXCESS CLAIM FEES**

		<u>Extra Claims</u>	<u>Fee from below</u>	<u>Fees Paid (\$)</u>
<b>Total Claims</b>	_____ - 20 or HP = _____		X _____	= _____
HP = highest number of total claims paid for, if greater than 20				
<b>Independent Claims</b>	_____ - 3 or HP = _____		X _____	= _____
HP = highest number of independent claims paid for, if greater than 3				
<b>Multiple Dependent Claims</b>			_____	= _____

<u>Large Entity</u>		<u>Small Entity</u>		
Fee Code	Fee (\$)	Fee Code	Fee (\$)	<u>Fee Description</u>
1202	50	2202	25	Each claim over 20
1201	200	2201	100	Each independent claim over 3
1203	360	2203	180	Multiple dependent claims, if not paid
1204	200	2204	100	Reissue: each claim over 20 and more than in the original patent
1205	50	2205	25	Reissue: each independent claim more than in the original patent

**SUBTOTAL (2) \$ 0.00**

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each add'l 50 or fraction thereof</u>	<u>Fee from below</u>	<u>Fees paid (\$)</u>
_____	- 100 = _____	/ 50 = _____ (round up to whole number)	X _____	_____

<u>Large Entity</u>		<u>Small Entity</u>		
Fee Code	Fee (\$)	Fee Code	Fee (\$)	<u>Fee Description: Application size fee for each additional group of 50 sheets beyond initial 100 sheets (count spec &amp; drawings except sequences &amp; program listings):</u>
1081	250	2081	125	Utility
1082	250	2082	125	Design
1083	250	2083	125	Plant
1084	250	2084	125	Reissue

**SUBTOTAL (3) \$ 0.00**

**FEE CALCULATION (continued)****4. OTHER FEE(S)**

				<u>Fees Paid (\$)</u>																																																																																																																																																																																																		
Non-English Specification, \$130 fee (no small entity discount)																																																																																																																																																																																																						
<table border="0"> <thead> <tr> <th colspan="2"><u>Large Entity</u></th> <th colspan="2"><u>Small Entity</u></th> <th rowspan="2"><u>Fee Description</u></th> </tr> <tr> <th><u>Fee Code</u></th> <th><u>Fee (\$)</u></th> <th><u>Fee Code</u></th> <th><u>Fee (\$)</u></th> </tr> </thead> <tbody> <tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td>Surcharge - late filing fee or oath</td></tr> <tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td>Surcharge - late provisional filing fee or cover sheet</td></tr> <tr><td>1053</td><td>130</td><td>1053</td><td>130</td><td>Non-English specification</td></tr> <tr><td>1812</td><td>2,520</td><td>1812</td><td>2,520</td><td>For filing a request for ex parte reexamination</td></tr> <tr><td>1813</td><td>8,800</td><td>1813</td><td>8,800</td><td>Request for inter parties reexamination</td></tr> <tr><td>1804</td><td>920*</td><td>1804</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td></tr> <tr><td>1805</td><td>1,840*</td><td>1805</td><td>1,840*</td><td>Requesting publication of SIR after Examiner action</td></tr> <tr><td>1251</td><td>120</td><td>2251</td><td>60</td><td>Extension for reply within first month</td></tr> <tr><td>1252</td><td>450</td><td>2252</td><td>225</td><td>Extension for reply within second month</td></tr> <tr><td>1253</td><td>1,020</td><td>2253</td><td>510</td><td>Extension for reply within third month</td></tr> <tr><td>1254</td><td>1,590</td><td>2254</td><td>795</td><td>Extension for reply within fourth month</td></tr> <tr><td>1255</td><td>2,160</td><td>2255</td><td>1,080</td><td>Extension for reply within fifth month</td></tr> <tr><td>1401</td><td>500</td><td>2401</td><td>250</td><td>Notice of Appeal</td></tr> <tr><td>1402</td><td>500</td><td>2402</td><td>250</td><td>Filing a brief in support of an appeal</td></tr> <tr><td>1403</td><td>1,000</td><td>2403</td><td>500</td><td>Request for oral hearing</td></tr> <tr><td>1451</td><td>1,510</td><td>1451</td><td>1,510</td><td>Petition to institute a public use proceeding</td></tr> <tr><td>1452</td><td>500</td><td>2452</td><td>250</td><td>Petition to revive - unavoidable</td></tr> <tr><td>1453</td><td>1,500</td><td>2453</td><td>750</td><td>Petition to revive - unintentional</td></tr> <tr><td>1501</td><td>1,400</td><td>2501</td><td>700</td><td>Utility issue fee (or reissue)</td></tr> <tr><td>1502</td><td>800</td><td>2502</td><td>400</td><td>Design issue fee</td></tr> <tr><td>1503</td><td>1100</td><td>2503</td><td>550</td><td>Plant issue fee</td></tr> <tr><td>1462</td><td>400</td><td>1462</td><td>400</td><td>Petitions to the Commissioner (CFR 1.17(f) Group I)</td></tr> <tr><td>1463</td><td>200</td><td>1463</td><td>200</td><td>Petitions to the Commissioner (CFR 1.17(g) Group II)</td></tr> <tr><td>1464</td><td>130</td><td>1464</td><td>130</td><td>Petitions to the Commissioner (CFR 1.17(h) Group III)</td></tr> <tr><td>1807</td><td>50</td><td>1807</td><td>50</td><td>Processing fee under 37 CFR 1.17(q)</td></tr> <tr><td>1806</td><td>180</td><td>1806</td><td>180</td><td>Submission of Information Disclosure Stmt</td></tr> <tr><td>8021</td><td>40</td><td>8021</td><td>40</td><td>Recording each patent assignment per property (times number of properties)</td></tr> <tr><td>1809</td><td>790</td><td>2809</td><td>395</td><td>For filing a submission after final rejection (see 37 CFR 1.129(a))</td></tr> <tr><td>1814</td><td>130</td><td>2814</td><td>65</td><td>Statutory Disclaimer</td></tr> <tr><td>1810</td><td>790</td><td>2810</td><td>395</td><td>For each additional invention to be examined (see 37 CFR 1.129(b))</td></tr> <tr><td>1801</td><td>790</td><td>2801</td><td>395</td><td>Request for Continued Examination (RCE)</td></tr> <tr><td>1802</td><td>900</td><td>1802</td><td>900</td><td>Request for expedited examination of a design application</td></tr> <tr><td>1504</td><td>300</td><td>1504</td><td>300</td><td>Publication fee for early, voluntary, or normal pub.</td></tr> <tr><td>1505</td><td>300</td><td>1505</td><td>300</td><td>Publication fee for republication</td></tr> <tr><td>1803</td><td>130</td><td>1803</td><td>130</td><td>Request for voluntary publication or republication</td></tr> <tr><td>1808</td><td>130</td><td>1808</td><td>130</td><td>Processing fee under 37 CFR 1.17(i) (except provisionals)</td></tr> <tr><td>1454</td><td>1,370</td><td>1454</td><td>1,370</td><td>Acceptance of unintentionally delayed claim for priority</td></tr> </tbody> </table>				<u>Large Entity</u>		<u>Small Entity</u>		<u>Fee Description</u>	<u>Fee Code</u>	<u>Fee (\$)</u>	<u>Fee Code</u>	<u>Fee (\$)</u>	1051	130	2051	65	Surcharge - late filing fee or oath	1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	1053	130	1053	130	Non-English specification	1812	2,520	1812	2,520	For filing a request for ex parte reexamination	1813	8,800	1813	8,800	Request for inter parties reexamination	1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	1251	120	2251	60	Extension for reply within first month	1252	450	2252	225	Extension for reply within second month	1253	1,020	2253	510	Extension for reply within third month	1254	1,590	2254	795	Extension for reply within fourth month	1255	2,160	2255	1,080	Extension for reply within fifth month	1401	500	2401	250	Notice of Appeal	1402	500	2402	250	Filing a brief in support of an appeal	1403	1,000	2403	500	Request for oral hearing	1451	1,510	1451	1,510	Petition to institute a public use proceeding	1452	500	2452	250	Petition to revive - unavoidable	1453	1,500	2453	750	Petition to revive - unintentional	1501	1,400	2501	700	Utility issue fee (or reissue)	1502	800	2502	400	Design issue fee	1503	1100	2503	550	Plant issue fee	1462	400	1462	400	Petitions to the Commissioner (CFR 1.17(f) Group I)	1463	200	1463	200	Petitions to the Commissioner (CFR 1.17(g) Group II)	1464	130	1464	130	Petitions to the Commissioner (CFR 1.17(h) Group III)	1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	1806	180	1806	180	Submission of Information Disclosure Stmt	8021	40	8021	40	Recording each patent assignment per property (times number of properties)	1809	790	2809	395	For filing a submission after final rejection (see 37 CFR 1.129(a))	1814	130	2814	65	Statutory Disclaimer	1810	790	2810	395	For each additional invention to be examined (see 37 CFR 1.129(b))	1801	790	2801	395	Request for Continued Examination (RCE)	1802	900	1802	900	Request for expedited examination of a design application	1504	300	1504	300	Publication fee for early, voluntary, or normal pub.	1505	300	1505	300	Publication fee for republication	1803	130	1803	130	Request for voluntary publication or republication	1808	130	1808	130	Processing fee under 37 CFR 1.17(i) (except provisionals)	1454	1,370	1454	1,370	Acceptance of unintentionally delayed claim for priority	
<u>Large Entity</u>		<u>Small Entity</u>		<u>Fee Description</u>																																																																																																																																																																																																		
<u>Fee Code</u>	<u>Fee (\$)</u>	<u>Fee Code</u>	<u>Fee (\$)</u>																																																																																																																																																																																																			
1051	130	2051	65	Surcharge - late filing fee or oath																																																																																																																																																																																																		
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet																																																																																																																																																																																																		
1053	130	1053	130	Non-English specification																																																																																																																																																																																																		
1812	2,520	1812	2,520	For filing a request for ex parte reexamination																																																																																																																																																																																																		
1813	8,800	1813	8,800	Request for inter parties reexamination																																																																																																																																																																																																		
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action																																																																																																																																																																																																		
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action																																																																																																																																																																																																		
1251	120	2251	60	Extension for reply within first month																																																																																																																																																																																																		
1252	450	2252	225	Extension for reply within second month																																																																																																																																																																																																		
1253	1,020	2253	510	Extension for reply within third month																																																																																																																																																																																																		
1254	1,590	2254	795	Extension for reply within fourth month																																																																																																																																																																																																		
1255	2,160	2255	1,080	Extension for reply within fifth month																																																																																																																																																																																																		
1401	500	2401	250	Notice of Appeal																																																																																																																																																																																																		
1402	500	2402	250	Filing a brief in support of an appeal																																																																																																																																																																																																		
1403	1,000	2403	500	Request for oral hearing																																																																																																																																																																																																		
1451	1,510	1451	1,510	Petition to institute a public use proceeding																																																																																																																																																																																																		
1452	500	2452	250	Petition to revive - unavoidable																																																																																																																																																																																																		
1453	1,500	2453	750	Petition to revive - unintentional																																																																																																																																																																																																		
1501	1,400	2501	700	Utility issue fee (or reissue)																																																																																																																																																																																																		
1502	800	2502	400	Design issue fee																																																																																																																																																																																																		
1503	1100	2503	550	Plant issue fee																																																																																																																																																																																																		
1462	400	1462	400	Petitions to the Commissioner (CFR 1.17(f) Group I)																																																																																																																																																																																																		
1463	200	1463	200	Petitions to the Commissioner (CFR 1.17(g) Group II)																																																																																																																																																																																																		
1464	130	1464	130	Petitions to the Commissioner (CFR 1.17(h) Group III)																																																																																																																																																																																																		
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)																																																																																																																																																																																																		
1806	180	1806	180	Submission of Information Disclosure Stmt																																																																																																																																																																																																		
8021	40	8021	40	Recording each patent assignment per property (times number of properties)																																																																																																																																																																																																		
1809	790	2809	395	For filing a submission after final rejection (see 37 CFR 1.129(a))																																																																																																																																																																																																		
1814	130	2814	65	Statutory Disclaimer																																																																																																																																																																																																		
1810	790	2810	395	For each additional invention to be examined (see 37 CFR 1.129(b))																																																																																																																																																																																																		
1801	790	2801	395	Request for Continued Examination (RCE)																																																																																																																																																																																																		
1802	900	1802	900	Request for expedited examination of a design application																																																																																																																																																																																																		
1504	300	1504	300	Publication fee for early, voluntary, or normal pub.																																																																																																																																																																																																		
1505	300	1505	300	Publication fee for republication																																																																																																																																																																																																		
1803	130	1803	130	Request for voluntary publication or republication																																																																																																																																																																																																		
1808	130	1808	130	Processing fee under 37 CFR 1.17(i) (except provisionals)																																																																																																																																																																																																		
1454	1,370	1454	1,370	Acceptance of unintentionally delayed claim for priority																																																																																																																																																																																																		
Other fee (specify) _____																																																																																																																																																																																																						
Other fee (specify) _____																																																																																																																																																																																																						
<b>SUBTOTAL (4)</b>				<b>\$ 0.00</b>																																																																																																																																																																																																		

\*Reduced by Basic Filing Fee Paid

**SUBMITTED BY:**Typed or Printed Name: Lester J. VincentSignature: Date: March 17, 2005Reg. Number: 31,460Telephone Number: 408-720-8300

Send to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450